

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

June 10, 2010

In the Matter of S. TOMSHECK and A.
TOMSHECK, Minors.

No. 294549
Berrien Circuit Court
Family Division
LC No. 2008-000079-NA

In the Matter of S. RECTOR, S. TOMSHECK, and
A. TOMSHECK, Minors.

No. 294625
Berrien Circuit Court
Family Division
LC No. 2008-000079-NA

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

In Docket No. 294549, respondent father T. N. Tomsheck appeals as of right the termination of his parental rights to S. Tomsheck and A. Tomsheck under MCL 712A.19b(3)(c)(i), (g), and (j). In Docket No. 294625, respondent mother B. Rector appeals as of right the termination of her parental rights to S. Rector and S. Tomsheck and A. Tomsheck under MCL 712A.19b(3)(c)(i), (g), (j) and (l). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The conditions leading to adjudication included A. Tomsheck's failure to thrive in respondents' care and a lack of parenting skills, demonstrated in the form of a dirty, unsafe home and a failure to interact with and nurture the children. These conditions constitute failure to provide proper care of the children. More than 182 days elapsed between the November 17, 2008, initial disposition and the October 1, 2009, termination hearing.

The evidence presented by two parenting educators, respondents' counselor, and the caseworker established that respondents were cooperative and participated in the services requested of them, but after 13 months remained unable to safely and effectively parent the children without 24-hour, in-home, hands-on supervision and assistance. Respondents were required not only to comply with services, but also to benefit to the point where they could provide a home free of neglect or abuse. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by statute on other grounds *In re Hansen*, 285 Mich App 158, 163; 774

NW2d 698 (2009), 1v gtd 485 Mich 940 (2009). The evidence showed that respondents had cognitive deficits in insight, judgment, and abstract thinking. Among other things, they did not clean the home until told exactly what needed to be cleaned, they did not understand that paint chips were not edible, even if not lead-based, they placed A. Tomsheck on his stomach in bath water, and they continued to reside with a known sexual offender. Respondents' inability to improve their parenting skills with the assistance of hands-on parent educators and counseling, and the educators' and counselor's opinions that respondents needed 24-hour parenting supervision and assistance, clearly showed that the children would be at risk of harm if returned to respondents' care. Respondents were given a Baby Think It Over infant simulator for over two weeks, and the doll recorded many missed feedings, diaper changes, and attention cues over this period, clearly demonstrating that the children, all of whom were under four years of age, would be neglected in their home. Respondents' argument that the trial court terminated their parental rights because they returned the doll with a broken neck was clearly contradicted by the trial court's statement that "the breakage of the baby surrogate really didn't have a whole lot of influence on the court. I don't think anybody can establish, no one did, how that happened. . . ."

Clear and convincing evidence showed that respondents were unable to provide a safe home and effective parenting and, given that their cognitive deficits were long-term and they exhibited no measurable improvement after over a year of services, the trial court did not err in terminating their parental rights under MCL 712A.19b(3)(c)(i), (g) and (j). In addition, the evidence showed that respondent mother's parental rights to another child were terminated in Missouri in 2005, so the trial court did not clearly err in also basing termination of her parental rights to these children on MCL 712A.19b(3)(l).

Further, the evidence did not show that termination of respondents' parental rights was clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondents' caseworker, parenting educator, and counselor testified to the children's gains once they were removed from respondents' care. As soon as the failure-to-thrive infant was removed, he rapidly gained weight. The caseworker testified that the toddlers' speech and language deficits improved dramatically once they received increased stimulation in foster care.

Respondents argue on appeal that petitioner should have explored placing the family in an adult group home or other setting in which respondents could receive the parenting assistance and supervision they needed, instead of simply terminating their parental rights. However, neither of respondents' attorneys advocated that solution during the termination hearing or in closing argument, and there was testimony from the caseworker that she knew of no program offering such an arrangement.

Given clear and convincing evidence that respondents were unable to provide a safe home and effective parenting within a reasonable time due to their cognitive deficits, and considering that no alternate living arrangement was available to provide respondents the assistance they would require to raise their children, the trial court did not err in finding termination of respondents' parental rights in the children's best interests.

Affirmed.

/s/ Donald S. Owens

/s/ Peter D. O'Connell

/s/ Michael J. Talbot